

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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Federal Communications Commission  
Office of Secretary

In the Matter of

Amendment of Part 1 of the  
Commission's Rules -  
Competitive Bidding Proceeding

WT Docket No. 97-82

To: Acting Chief, Wireless  
Telecommunications Bureau

**COMMENTS**

Southwestern Bell Mobile Systems, Inc. (SBMS) by its attorneys, submits these comments in response to the Public Notice, DA 97-679, issued by the Wireless Telecommunications Bureau on June 2, 1997.

**I. INTRODUCTION.**

Congress and the Commission established rules to promote the participation of small businesses, rural telephone companies, and businesses owned by minorities and women (Designated Entities, "DEs").<sup>1</sup> Congress specified two goals for this mandate. The Commission should promote first economic opportunity and competition and second variety of license ownership.<sup>2</sup> To fulfill these goals, Congress told the Commission to

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<sup>1</sup> 47 U.S.C.A. § 309(j)(4)(D).

<sup>2</sup> 47 U.S.C.A. § 309(j)(3)(B).

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consider alternative payment schedules for DEs.<sup>3</sup> The Commission did so and adopted a menu of options from which it could chose.<sup>4</sup>

We support these goals, and the Commission must ensure that they are fulfilled. Fulfillment requires the participation of the C and F block licensees in the wireless market. If for good reason those licensees cannot now meet the payment terms for their licenses, then the Commission should modify their payment terms to allow flexibility in the timing of complete repayment. However, the Commission must guard against the exploitation of its relief by non DEs.

## **II. PUBLIC INTEREST MANDATES THE VIABILITY OF THE DEs.**

Congress and the Commission have declared the importance to the public interest of DEs' participation in the wireless market. They have stated the benefits that participation provides to our society: economic opportunity, variety of ownership, access to new and innovative technologies, and competition.<sup>5</sup> We support those goals. Competition is enhanced not only by a greater number of players, but equally by the variety of those players. The DEs-small businesses, rural telephone companies, and minority and women owned firms-promote variety. Such variety achieves two significant public interest objectives. It distributes the ownership of licenses throughout a broader number of competitors, and it promotes a greater scope of services. Thus, the public, competition, and consumers all benefit. These benefits are of such overwhelming

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<sup>3</sup>47 U.S.C.A. § 309(j)(4)(A).

<sup>4</sup> Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Second Report and Order, PP Docket No. 93-253, para. 229.

significance for our Country that other purposes of the auctions are secondary. If it is necessary to subordinate any secondary goals to achieve the primary goals, then the Commission must do so.

### **III. CHANGED CIRCUMSTANCES WARRANT RELIEF.**

Since the time the Commission established its payment rules for the C and F block licensees, financial markets have changed significantly. Public equity and debt financing are for all practical purposes unavailable to the DEs. For example, we believe that NextWave has had to repeatedly cancel planned public offerings. Pocket has filed for Chapter 11 protection. Previously, the financial markets signaled that financing would be available on favorable terms. It was reasonable for the DEs to rely on those representations when they submitted their auction applications. Because conditions beyond the control of the DEs have changed, and their financing expectations were reasonable, the Commission should provide payment relief. The relief should be a reasonable extension of the payback schedule.

We agree with the National Association of PCS Entrepreneurs (NAPE) that unless relief is provided, the current payment schedule will likely force defaults by demanding all cash available to the C and F block licensees. Defaults would not only deny the benefits these licensees provide as described above but would also require the re-auction of licenses. That would probably bring in less money for the Federal Government than what the licensees bid and have agreed to pay.

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<sup>5</sup> Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Fifth Report and Order, PP Docket No. 93-253, para. 96.

Relief is consistent with Congressional and Commission intent. Both recognized that the principal problem facing DEs is raising capital.<sup>6</sup> Consequently, the Commission fashioned provisions to assist the DEs. The Commission stated that “the measures we establish today to encourage the entry of designated entities also are designed to promote strong, long term bona fide competitors.”<sup>7</sup> If it is now necessary to either relax or extend certain rules to achieve these goals, then it is appropriate under the prior orders for the Commission to do so.

#### **IV. RELIEF MUST NOT UNDERMINE THE DIVERSITY CONCEPT.**

The relief the Commission provides must be consistent with the principles of DE ownership. Therefore, the Commission should not modify either the attribution, ownership, or transfer rules. If the Commission did weaken those requirements, then it would equally weaken the purposes for DEs, diversity of ownership, and expose financially strapped licensees to gun-point acquisitions by exploiting parties.

The Commission recognized in prior orders that it needed to strike a balance: “we are very concerned, however, that such flexibility [for payment] not undermine our more fundamental objective, which is to ensure that designated entities retain de facto and de jure control of their companies at all times.”<sup>8</sup>

Some proposals for relief seek to modify the ownership attribution rules. There has been no showing that that form of relief is necessary at this time. One such proposal is from MCI which is not a DE. The Commission must be wary of proposals that might

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<sup>6</sup> Id. at 110.

<sup>7</sup> Id. at 112.

actually be disguised attempts to exploit the precarious financial condition of certain DEs and leverage the relief the Commission provides for unintended parties.

**V. RELIEF SHOULD BE CAUTIOUS AND MODERATE.**

Some relief requested is extreme: extending the payment schedule to twenty years; deferring all payments during the first five years; and effectively reducing the amount of the winning bids. We believe that the Commission should take cautious and moderate steps. If it appears that the relief is inadequate, then the Commission can take further action as necessary. Should a C or F block licensee need immediate relief, the Commission can always grant a waiver on an expedited schedule.

The proposal of Alpine PCS, Inc. would be a good initial step. It suggests that payments be made annually. We recommend its adoption.

**VI. COST SHARING PAYMENT RULES SHOULD NOT BE ALTERED.**

The Commission adopted a balanced plan for sharing the costs of microwave relocation expenses by all licensees.<sup>9</sup> The Commission should not alter or delay the payment by DEs of their share of these expenses. The relocation costs are a burden that must be borne by all licensees. To alter or delay the payment requirements of the DEs would unfairly disadvantage other licensees. The amount owed by the DEs is minor compared to the license costs, and payment should not be a burden to them.

Consequently, if the Commission does provide relief, it should amend 47 CFR 24.249.

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<sup>8</sup> Id. at 129.

<sup>9</sup> Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, First Report and Order and Further Notice of Proposed Rule Making, WT Docket No. 95-157.

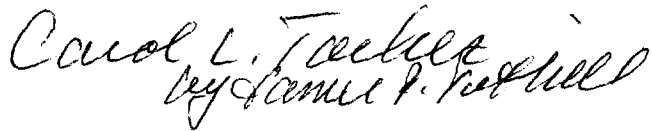
That rule currently provides that DEs will have identical payment options available to them with respect to payments under the cost-sharing plan as they do for their license payments. We believe that the cost-sharing payment schedule should remain as it is today and the rule should be amended to reflect that.

## **VII. CONCLUSION.**

The Congressional goals of diversity, innovation, and competition require healthy C and F block licensees. However, their existence is currently threatened by their inability to obtain financing. A lack of financing was not expected at the time they filed their applications and engaged in the auction. Circumstances have changed which warrant relief of their payment obligations. The Commission, however, must ensure that undeserving parties do not reap the benefits of its actions. We believe that the proposal

of Alpine PCS, Inc.-to make payments annual- should be adopted. Finally, the Commission should not alter or delay the microwave cost sharing payment obligations of the DEs.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Carol L. Tacker".

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